

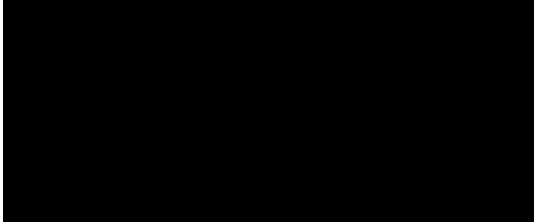
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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536

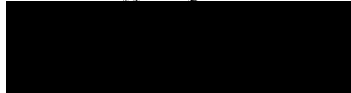


**U.S. Citizenship  
and Immigration  
Services**



FILE: WAC 02 041 55664 Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2004

IN RE: Petitioner:  
Beneficiary:




PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3)  
of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a fabric cutting service. It seeks to employ the beneficiary permanently in the United States as a cutting supervisor. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. The petition's priority date in this instance is November 4, 1997. The beneficiary's salary as stated on the labor certification is \$17.45 per hour or \$36,296 per year.

Counsel initially submitted insufficient evidence of the petitioner's ability to pay the proffered wage. In a request for evidence (RFE) dated March 13, 2002, the director required additional evidence to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. The RFE exacted, for 1997 to the present, the petitioner's original, signed federal income tax return, as submitted, annual report or audited financial statement. The RFE specified, also, quarterly wage reports (CA, EDD Form DE-6) for the period from 1997 with the job title and duties of each employee.

Counsel submitted the petitioner's 1997-2000 Forms 1120S, U.S. Income Tax Return for an S Corporation and Form DE-6 for quarters ending September 30, 1997 through March 31, 2002. The federal tax returns reflected ordinary income or (loss) from trade or business activities, ranging from a 2000 ordinary loss of (\$41,083) to 1997 ordinary income of \$17,354, each less than the proffered wage. The director further considered the difference of current assets minus current liabilities, as reported in Schedule L of the federal tax returns, i.e. net current assets. They ranged from a 2000 deficit of (\$41,108) to \$15,853 in 1997, each less than the proffered wage.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage at the priority date, and continuing until the beneficiary obtains lawful permanent residence, and denied the petition.

On the appeal received September 3, 2002 counsel states:

I am sending a brief and/or evidence to the [AAO] within 30 days.

The Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] erred as a matter of law and fact in finding that the Petitioner did not have the ability to pay the proffered wage from the Priority Date until the date of the Notice of Decision.

Counsel has filed no further brief or evidence with the director or the AAO, and more than the time allowed and requested has elapsed. 8 C.F.R. § 103.3(a)(2)(i) and (viii). Counsel does not identify, specifically, any erroneous conclusion of law or statement of fact. Hence, the appeal must be summarily dismissed. 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.